



**HAWAII
SMALL BUSINESS
REGULATORY REVIEW
BOARD
ANNUAL REPORT SUMMARY**

**Review of Administrative Rules, Legislation
and
Rules Requested by Small Business**

**In Compliance with
Chapter 201M,
Hawaii Revised Statutes**

December 2007 – December 2008

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD
ANNUAL REPORT SUMMARY 2008

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SECTION I

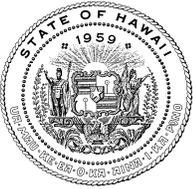
MESSAGE FROM THE DIRECTOR



As the Director of the Department of Business, Economic Development and Tourism, it gives me great pleasure to thank the members of the Small Business Regulatory Review Board for their hard work. Because Hawaii small businesses are the heart of Hawaii's economy, the Board's efforts to improve the regulatory burden of small businesses is greatly appreciated and central to our way of life.

Theodore E. Liu
Director

MESSAGE FROM THE CHAIRPERSON



Linda Lingle
Governor

Theodore E. Liu
Director, DBEDT

Mark K. Anderson
Deputy Director, DBEDT

Members

Lynne Woods
Chairperson
Maui

Sharon L. Pang
Vice Chairperson
Oahu

Michael Yee
2nd Vice Chairperson
Oahu

Dorvin Leis
Maui

Donald Dymond
Oahu

Charles Au
Oahu

Richard Schnitzler
Hawaii

Bruce E. Bucky
Oahu

Peter Yukimura
Kauai

David S. De Luz, Jr.
Hawaii



Lynne Woods, Chairperson
December 2008

The year 2008 has brought the businesses of Hawaii the opportunity to comment on the rule-making process by way of the Board's newly developed REGULATORY ALERT and the SMALL BUSINESS BILL OF RIGHTS passed by the 2008 legislature. The Regulatory Alert fostered partnerships with many industry specific associations, chambers of commerce across the State, and the National Federation of Independent Business for the purpose of communicating with our small business owners. It is a pleasure to work hand-in-hand with our many industries and their leadership.

This annual report documents all of the rules provided by the State departments as well as Counties and reviewed by the Board members. Over the past year, the Board has continued to notice a growing trend towards including representatives of the business community in the process of rule-making and review. We believe this inclusion is opening doors to awareness for both business and government and we encourage this communication to continue at an even broader level. When the Small Business Regulatory Flexibility Act, Chapter 201M, HRS, was passed in 1998, it included not just the State but also all of the Counties. Up until recently, the counties have not been participating in the rule review process so we have continued discussions with each Mayor to facilitate their inclusion.

Much of the success of this Board is due to the incredible efforts of Dori Palcovich, Business Advocate. Ms. Palcovich's continued dedication and hard work continues to make us shine. On behalf of the Board I also wish to thank the 2008 Legislature for their support of our efforts, Governor Lingle for her unwavering support of small business, and Director of DBEDT, Ted Liu, for his interest and constant support. To have been re-elected by fellow board members to the position as Chairperson is an honor. I very much enjoy working with all of you. Your knowledge, wisdom, guidance, companionship and support continue to motivate all of us.

SMALL BUSINESS REGULATORY REVIEW BOARD

OVERVIEW

Members of the Small Business Regulatory Review Board are pleased to provide the Annual Summary for the period of December 2006 through December 2007, pursuant to the Hawaii Small Business Regulatory Flexibility Act (RFA), Chapter 201M, Hawaii Revised Statutes (HRS).

[201M-5] Small business regulatory review board; powers

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to any agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules.

ANNUAL SUMMARY

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The Small Business Regulatory Review Board was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act (RFA), pursuant to Act 168. Subsequently, the role of the Board has been codified in Chapter 201M, HRS, as amended. (Appendix 1)

SMALL BUSINESS REGULATORY REVIEW BOARD MEMBER COMPOSITION AND RESPONSIBILITY

The Board is comprised of eleven current or former owners or officers of businesses from across the State. It is administratively attached to the Department of Business, Economic Development and Tourism (DBEDT), and has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board is also charged with reviewing existing rules upon request from small business owners, or at the Board's initiative. For requests regarding County rules, the Board may make recommendations to County council or the mayors for appropriate action.

In addition to reviewing rules and regulations, members regularly volunteer their time attending State agency meetings, making presentations by performing outreach activities to small business organizations, and testifying on legislation. The Board also has the power to solicit testimony from the public regarding any reports submitted by State agencies.

As an effective and efficient means of review, each member is assigned to one or more State agencies as a "discussion leader," and is responsible for the initial review of the administrative rules of that agency prior to consideration by the full

Board. Since its inception, the Board has had several new members and re-appointees whose terms have expired. As of December 2008, the Board was operating with ten members. (Appendix 2)

ADMINISTRATIVE RULE REVIEW

Since its inception, the Board reviewed a total of 361 sets of proposed new and amended administrative rules. The results are categorized in Appendix 3. From December 2007 through December 2008, the Board reviewed and made recommendations on 48 sets of new and amended rules, both pre- and post public hearing. A summary of each rule is categorized below.

Department of Accounting & General Services

HAR Chapter 3-122, “Source Selection and Contract Information”

Comments – The Board unanimously agreed that the proposed rules proceed to both public hearing and to the Governor’s office for adoption.

Department of Agriculture

HAR Chapter 4-60, “Minimum Prices to the Hawaii Milk Shed”

Comments – The Board strongly supported that the proposed amendments proceed both to public hearing and to the Governor’s office for adoption after public hearing.

HAR Chapter 4-69A, “Pests for Control or Eradication”

Comments – The Board supported that the proposed amendments proceed to the Governor’s office for adoption after public hearing.

HAR Chapter 4-87, “Voluntary Registration of Service Persons”

Comments – The Board supported that the proposed amendments proceed to public hearing.

**HAR Chapter 4-96, “Schedule and Fees for Licensing Devices
Susceptible of Commercial Usage and Measuring Devices and
Measurement Standards for Testing Certification”**

Comments – The Board supported that the proposed amendments proceed to public hearing.

Department of Attorney General

HAR Chapter 5-11, Notaries Public”

Comments – The Board sent a memorandum to the Governor stating that the Board had no opportunity to comment on the post public hearing statement as the rules had already been adopted.

Department of Budget & Finance/Public Utilities Commission

Budget & Finance

**HAR Chapter 6, “Employees Retirement System, “ HAR Chapter 6-20,
“Public Records and Information, Adoption, Amendment or Repeal of Rules;
Declaratory Ruling, Costs of Rules,” HAR Chapter 6-22, “Certifications and
Findings of the Medical Board,” HAR Chapter 6-23, “Contested Case
Hearings,” HAR Chapter 6-24, “Election of Members and Retirant of the
System to the Board of Trustees,” and HAR Chapter 6-26, “Application for
Retirement Benefits; Proof of Age and Computation of Age”**

Comments – The Board unanimously agreed to recommend that the proposed rules proceed to public hearing. In addition, the Board agreed that the agency did not have to re-submit the rules back to the Board after public hearing because of the minimal impact on small business.

Public Utilities Commission – No key matters of small business impact have been noted.

Department of Business, Economic Development & Tourism / Hawaii Community

Development Association

HAR Chapter 15-20, “Relating to Improvement District 11”

Comments – The Board unanimously approved that the repeal of these rules proceed to the Governor for adoption.

HAR Chapter 15-150, “Rules Governing Special Management Areas and Shoreline Areas within Community Development Districts and Practice and Procedures before the Office of Planning”

Comments – The Board unanimously approved that the proposed amendments proceed to public hearing.

HAR Chapter 15-211, 212, 213, and 214, “Relating to Rules for Kewalo Basin”

Comments – The Board unanimously recommended that these post public hearing statements be moved forward to the Governor for adoption and that in the letter to the Governor it is noted that this Board is aware of Act 158, SLH 2008, and that the Governor do whatever is possible to transfer the \$4.5 million from the Department of Transportation to the DBEDT’s Hawaii Community Development Authority.

Department of Commerce & Consumer Affairs

HAR Chapter 16-3, “Life Insurance Replacement”

Comments – The Board unanimously agreed that the proposed rules proceed to public hearing.

HAR Chapter 16-39, “Securities”

Comments – The Board unanimously agreed that the proposed rules proceed to the Governor for adoption.

HAR Chapter 16-51, “Fees”

Comments – The Board unanimously agreed that the proposed rules proceed to public hearing. After public hearing, the Board sent a memorandum to the Governor stating that the Board had no opportunity to comment on the post public hearing statement as the rules had already been adopted.

HAR Chapter 16-53, “Fees Relating to Boards and Commissions”

Comments – The Board unanimously approved that the proposed rules proceed to public hearing. After public hearing, because the rules had already been adopted, the Board provided no comment.

HAR Chapter 16-79, “Licensing of Dietitians”

Comments – The Board make no comment to these after public hearing rules because the Governor had subsequently adopted them.

HAR Chapter 16-89A, “Nurse Aide”

Comments – The Board unanimously recommended that the proposed new rules proceed to public hearing. The Board also recommended to DHS that based on the testimony at the Board meeting, there was strong opposition to the 100-hour training and 24-hour proficiency evaluation. The Board encouraged DHS to work with the stakeholders in an attempt to modify the mandate.

HAR Chapter 16-114, “Relating to Real Estate Appraisers”

Comments – The Board unanimously recommended that the proposed rules proceed to public hearing.

HAR Chapter 16-131, “Relating to the Designation of Access Organizations”

Comments – The Board unanimously approved that these rules proceed to public hearing and to the Governor for adoption. Upon review of the post public hearing statements, it was indicated that because, statutorily, non-profit rule-making does not come to this Board, no action was taken by the members.

HAR Chapter 16-170, “Disclosure of Material Transactions”

Comments – The Board unanimously approved that the proposed amendments proceed to public hearing.

HAR Chapter 16-171, “Miscellaneous Insurance Rules”

Comments – The Board unanimously approved that the post public hearing statements proceed to the Governor for adoption.

Department of Defense

HAR Chapter 7-31, “Services to Veterans”

Comments – The Board unanimously approved that the post public hearing statements proceed to the Governor for adoption despite the Governor previously adopting them.

HAR Chapter 7-32, “Hawaii State Veterans Cemetery Rules of Practice and Procedure”

Comments – The Board unanimously approved that the post public hearing statements proceed to the Governor for adoption despite the Governor previously adopting them.

Department of Education

No key matters of small business impact have been noted.

Department of Hawaiian Home Lands and the Office of Hawaiian Affairs

No key matters of small business impact have been noted.

Department of Health

HAR Chapter 11-81, “Smoking in Workplaces and Public Places”

Comments – At the initial review, the Board unanimously deferred supporting the proposed rules as presented, and provided its initial concerns and recommendations, as follows:

- The small business impact statement clearly indicates that a business is required to provide proper signage and to inform customers that smoking is not permitted within twenty feet of the entrance. Despite adherence to these mandates, the rules indicate that a business owner may still be in violation of the rules, and cited or fined when a customer is found smoking in the establishment. It was recommended that the rules clarify who exactly is in violation as it relates to the law.
- The term “violation” was not defined in the proposed rule. It was recommended that “violation” be defined in the rule as well as the identities of the entities enforcing the violation.
- There is overall concern that the proposed rule is not aligned with the corresponding statute. It was recommended that the law and the statute be

compared for consistency and any inconsistencies are rectified. Additionally, any methodologies in the application of the law and any exemptions must also be stated in the rules.

- Those testifiers opposed to the proposed rules were encouraged at the Board meeting to provide their specific concerns to the Department of Health. It was recommended that the department seek commentary from those small businesses and to take those comments into consideration when re-drafting the rules.

At the second pre-public hearing review, the Board members recognized that in order to manage the law effectively, the rules and regulations must not place additional burden on the stakeholders to carry out the rules, and do not exceed the existing law. At the same time, a fair process must be established for the stakeholders to abide by. Based on this analogy, the members expressed some concern and reservations of the proposed rules. In spite of these reservations, the Review Board agreed to recommend that the rules proceed to public hearing on each of Hawaii's islands with the following suggestions/comments.

- Health inspectors are not in place at this time, and local law enforcement has not taken an active role. As a result, enforcement would likely come from citizens reporting on fellow citizens. The Board is opposed to an environment of citizens against citizens when an alleged violation is occurring in an establishment. In such a situation, the Review Board is suggesting that DOH initially notify the owner/violator that an alleged violation has occurred and request that the violation in question is rectified within a reasonable period of time before a citation is made or a penalty is incurred.

- During the Board member's discussion, there was concern that the proposed rules do not reflect verbiage indicating that without cause or a finding of fact through an investigation, there should be no sanction or imposition of a fine. The rules also do not reflect verbiage indicating that an individual may be granted immunity when a first time violation has been found. Subsequently, the Board members' recommendation was shared with the State's deputy attorneys general, from both the department of business, economic development and tourism, and health, with clear consensus that the recommendation exceeds what the law requires.
- It was noted that some of the stakeholders who attended the board meeting did not have a chance to review the most current set of rules and small business impact statement. The Review Board suggested that those stakeholders be provided this information in order to relay feedback to DOH prior to proceeding to the public hearings.

HAR Chapter 11-44, "Radiologic Technology Board/Radiologic Technology Rules"

Comments – The Board unanimously agreed to recommend the proposed rules proceed to public hearing.

HAR Chapter 11-39, "Air Conditioning & Ventilation" and HAR Chapter 11-48, "Ventilation System"

Comments – The Board unanimously agreed to recommend that the proposed rules proceed to public hearing.

HAR Chapter 11-218, "Communication Access Services for Persons who are Deaf, Hard of Hearing and Deaf-Blind"

Comments – The Board unanimously agreed that the proposed amendments proceed to public hearing.

Department of Human Resources Development

No key matters of small business impact have been noted.

Department of Human Services

HAR Chapter 17-1454.1, “Regulation of Home and Community-Based Case Management Agencies and Community Care Foster Family Homes”

Comments – The Board unanimously agreed that the proposed rules proceed to public hearing.

HAR Chapter 17-1424, “Licensing of Adult Day Care Centers,” 17-1441, “Personal Care Services,” and 17-1455, “Background Check”

Comments – The Board unanimously recommended that the proposed amended rules proceed to public hearing.

HAR Chapter 17-1714, “General Eligibility Requirements,” HAR Chapter 17-1722, “Special Medical Assistance Coverages and Programs,” HAR Chapter 17-1723, “Medical Assistance to Aliens and Refugees,” HAR Chapter 17-1725, “Assets,” HAR Chapter 17-1727, “Hawaii Health Quest,” HAR Chapter 17-1728, “QUEST-Net,” HAR Chapter 17-1728.1, “QUEST-Adult Coverage Expansion (ACE),” and HAR Chapter 17-1730, “QUEST-Spenddown Program”

Comments - The Board unanimously recommended that the amended rules proceed to public hearing.

HAR Chapter 17-1700, “Definitions,” HAR Chapter 17-1711, “Application Processing Requirements,” HAR Chapter 17-1721, “Medical

Assistance to the Aged, Blind and Disabled,” HAR Chapter 17-1721.1, “QUEST Expanded Access,” HAR Chapter 17-1722, “Special Medical Assistance Coverages and Programs,” HAR Chapter 17-1723, “Medical Assistance to Aliens and Refugees,” HAR Chapter 17-1727, “Hawaii Health QUEST,” and HAR Chapter 17-1730, “QUEST-Spenddown Program,” HAR Chapter 17-1732, “Coverage of Blind or Disabled Pregnant Women and Children,” HAR Chapter 17-1733, “Coverage of Individuals with Breast and Cervical Cancer,” HAR Chapter 17-1734, “State Funded Coverage of Individuals with Breast and Cervical Cancer,” and HAR Chapter 17-1735, “General Provisions for Fee for Service Medical Assistance”

Comments - The Board unanimously recommended that the amended rules proceed to public hearing.

Department of Labor & Industrial Relations

HAR Chapter 12-10, “Workers’ Compensation,” HAR Chapter 12-14, “Vocational Rehabilitation,” HAR Chapter 12-15, “Workers’ Compensation Medical Fee Schedule” & Exhibit A “Workers’ Compensation Supplemental Medical Fee Schedule”

Comments – The Board unanimously agreed that the proposed amendments proceed to public hearing.

HAR Chapter 12, Subtitle 8, Hawaii Occupational Safety and Health, “Part 2 General Industry Standards” HAR Chapter 12-50 through 12-190, “Personal Protection Equipment”

Comments – The Board fully supported that the proposed rules proceed to public hearing. After public hearing, the Board sent a memorandum to the Governor stating that the Board had no opportunity to comment on the post public hearing statement as the rules had already been adopted.

HAR Chapter 12-45.1 and 45.2, “State Fire Code

Comments – The Board supported that the amendments to the rules proceed to public hearing.

HAR Chapter 12-48.7, “Relating to Hoisting Machines Operators”

Comments – The Board supported that the amendments to the rules proceed to public hearing.

Department of Land & Natural Resources

HAR Chapter 13-1, “Rules of Practice and Procedure”

Comments – The Board recommended that the proposed amended rules proceed to public hearing.

HAR Chapter 13-60.4, “Miloli’i Subsistence Fishing Area, Hawaii”

Comments – The Board recommended that the amended rules proceed to public hearing.

HAR Chapter 13-60.7, “Kahekili Herbivore Fisheries Management Area, Maui”

Comments – The Board recommended that these new proposed administrative rules proceed to public hearing.

Department of Public Safety

No key matters of small business impact have been noted.

Department of Taxation

No key matters of small business impact have been noted.

Department of Transportation

No key matters of small business impact have been noted.

University of Hawaii

No key matters of small business impact have been noted.

Counties

City and County of Honolulu

Liquor Commission of the City and County of Honolulu

Comments – The Board unanimously agreed that the proposed rule amendments proceed to public hearing and that a letter of notification regarding the public hearing be sent to all the licensees with notations as to specific impacts such as license renewal fee adjustments. Additionally, the Board created a task force to analyze the proposed amendments and based upon its analysis, the following was recommended both before and after public:

- The rule sections that relate to the new hotel-condo class of license go forward for approval.
- The following three rule sections not be recommended as presented for the noted specific reasons:
 - o §3-81-17.7 “Monies Collected from Assessment of Fines” – The Liquor Commission had proposed a statute change through the 2008 Legislature that would allow the Commission to spend fine monies for operational items even though the current statute specifically prohibits this. Because the legislature rejected this

change in the law and because the rule is in violation of the current statute, this rule section should not go forward.

- §3-81-17.8 “Waiver” – The Liquor Commission stated that this proposed rule section was adapted from a similar rule in the state of Arizona. The President of the Arizona Licensed Beverage Association (ALBA) in a telephone conversation indicated that there is no rule in its system that would allow the Liquor Board to waive rules. It referred this office to the ALBA lobbyist for further discussion and the lobbyist confirmed that no such rule exists. This rule section as written and revised should not be approved as it would give unilateral discretion to the Liquor Commission and its Administration to waive rules for some parties and not for others.
- §3-81-38.25 “Restrictions or Conditions on Licenses” – The statute currently provides for restrictions and conditions on licenses in a limited way for limited reasons. The proposed amendment greatly expands the law to allow conditions or restrictions to be placed on licensees at any time for any reason. The Liquor Commission clearly wants to re-write the law; this should be reserved for lawmakers. The most often cited example of how this would be used by the Liquor Commission involves changing the hours of operation for a new licensee application, which by itself violates #281-17-a-8, and clearly states the hours

of operation of any class to transact business “shall be uniform throughout the county as to each class.”

County of Maui

Title 10-120 “Rules of Practice and Procedure for Commercial Ocean Recreational Activity Permits”

Comments – Upon hearing from representatives of Maui County’s Department of Parks and Recreation as well as several testifiers in opposition of the proposed rules as presented the Board recommended the following:

- That the County of Maui’s Department of Parks and Recreation provide this Board with a third or final draft of the rules, comparing the rules presented at the March 19th meeting. Also recommended was that a summary of the discussions and concerns of all parties involved along with an agreeable consensus of the final draft be provided.

County of Kauai

Rules of Water System Standards of the Board of Water Supply – “Relating to the Annotations Table 100-19A of the Kauai Water System Standards 20002”

Comments – The Board unanimously agreed that the rules proceed to public hearing and after public hearing for adoption by the Mayor.

BOARD LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. The Board continues to monitor legislation with both positive and negative impacts on small business. See

“Legislative Review” at the end of this report for specific legislation the Board followed during the 2008 legislative session.

SMALL BUSINESS IMPACT STATEMENT *and* ADMINISTRATIVE DIRECTIVE 99-02

Under Section 201M-2, HRS, State agencies that want to adopt new or modified administrative rules that have an impact on small business must submit to the Board a small business impact statement showing the economic impact on those businesses. As a result, the Board reviews the small business impact statements and the Governor’s Administrative Directive (AD), while working with the rule-drafting agencies on behalf of the small business community. In August 1999, AD 99-02 (Appendix 4) was issued to update the policy and procedures by which State departments and agencies request the Governor’s approval for a public hearing for any proposed adoption, amendment or repeal of administrative rules developed under Chapter 91, HRS.

During the past several years, the Governor’s office and DBEDT staff, with the concurrence of the Board, have been updating and modifying the existing AD. At this writing, the proposed AD was reviewed by the Attorney General’s Office but there has been no word as to when final approval is expected.

STRATEGIC PLAN

The Board meets annually to re-establish what it stands for and to set clearly defined goals for the upcoming year. In June 2008, the Board held its annual strategic planning session at The Pacific Club, facilitated by Mr. Thomas J. Mitrano, of Thomas J. Mitrano, Inc. At this session, the members adopted four “signature goals” for its 2008-2009 year (Appendix 5). These goals are:

1. Implement the RegAlert project in concert with organizational partners
2. Hire an intern assistant for its Board Liaison
3. Develop and implement a coordinated public outreach and identification program
4. Prepare for eventual implementation of the Bill of Rights and Small Business Impact Statement

REGALERT PROJECT

In 2007, one of the Board's major goals was to establish and implement a small business regulatory alert system, called "RegAlert." In 2008, those efforts came to fruition when the Board officially launched the RegAlert project in September. On September 18, 2008, *The Honolulu Advertiser* published the first RegAlert article, "Small Business Owners to get Alerts," which received much attention from the public.

What is RegAlert?

RegAlert is an effort to reduce the regulatory burden on Hawaii small businesses, and allows the Review Board to serve as the "voice of small business" on both new and proposed administrative rules directly to the rule-making State and County agencies. Through RegAlert, business owners are able to keep apprised of proposed rule changes on selected rules and are given an opportunity to provide input to the agencies promulgating the proposed or amended rule via the Review Board.

RegAlert will assist small business by empowering Hawaii's small business community to become more involved in the regulatory process and providing business owners with the ability to comment on proposed State and County rules and regulations that affect them. In addition, RegAlert will assist this Board in

responding to State and County agencies by acquiring valuable feedback from small businesses affected by the proposed rules.

During the Board's strategic planning session held in June 2008, members met with invited business organizational partners to discuss the RegAlert project. The Board is open to bringing on more partners which they will recommend on a case by case basis. To date, the Board's RegAlert partners include:

- Maui Chamber of Commerce
- Chamber of Commerce of Hawaii
- National Federation of Independent Business
- Small Business Hawaii
- Kauai Chamber of Commerce
- Hawaii Island Chamber of Commerce.
- Kauai Japanese Chamber of Commerce

Press Release

On October 16, 2008, DBEDT announced the Board's first RegAlert in *The Honolulu Advertiser* from the Department of Health, HAR Chapter 11-81 "Smoking in the Workplace."

RegAlert Process

The process of RegAlert is as follows:

- 1) State agency submits new/proposed administrative rule to DBEDT/Review Board
- 2) Review Board e-mails RegAlert memorandum with attached small business impact statement to partnered small business organizations
- 3) Review Board composes separate "press release" of RegAlert for DBEDT's website
- 4) Small business organizations e-mail RegAlert memorandum to members
- 5) Organization members receive and review RegAlert e-mail
- 6) Organization members go to Review Board's RegAlert website for proposed/amended administrative rule

- 7) Organization member submit responses directly to Review Board's e-mail address
- 8) Responses are received via Review Board e-mail
- 9) Responses are compiled and included as agenda item on next scheduled Review Board meeting
- 10) Review Board members review organization members' responses Review Board meeting
- 11) DBEDT composes response to small business organization

YEARLY ANNUAL PLAN

In addition to the Board's strategic plan, DBEDT requires each program manager to provide a Yearly Annual Plan. The plan is based on W. K. Kellogg Foundation's logic model and assists in evaluating each program and provides a common framework of how and why a program makes a difference. In September 2008, the Board's annual plan and goals were presented and approved by DBEDT. In keeping with the objectives and goals outlined in the Board's strategic plan, the following areas of focus were identified and concentrated on during the 2008 fiscal year:

1. Public Outreach
2. Engage the media
3. Work closely with the Hawaii legislature
4. Work closely with Hawaii State agencies

As outlined in the 2008 Yearly Annual Plan, the Board's outputs and outcomes are as follows:

- 1) RegAlert
In FY 2009 and FY 2010, the SBRRB anticipates sending out approximately 20 alerts per fiscal year. One RegAlert was sent out during fiscal 2009 – HAR Chapter 11-81, "Smoking in Public Places." No responses were received by the Board.
- 2) Outreach / Communications Avenue
In FY 2008, SBRRB members spoke at 2 small business venues.

In FY 2009 and FY 2010, members anticipate speaking at approximately one venue per month. As of this writing, board members spoke at four venues during fiscal 2009.

3) Media Visibility

In FY 2008, 14 press releases, articles and announcements referencing the SBRRB were published.

In FY 2009 and FY 2010, the SBRRB anticipates one publication per month each fiscal year. As of this writing, nine articles have been published during fiscal 2009.

4) Legislative and Governmental Outreach

In FY 2008, the SBRRB testified on 8 bills, attended the opening legislative ceremonies, and communicated directly regularly with several legislators throughout the year.

In FY 2009 and FY 2010, the SBRRB anticipates testifying on 5 to 10 bills each fiscal year and to continue an open dialogue with the legislators.

5) Small Business Inquiries - Legislative and Administrative Rule Assistance

In FY 2008, the SBRRB received one small business inquiry.

In FY 2009 and FY 2010, the SBRRB anticipates receiving at least 6 small business inquiries each fiscal year. Three inquiries were received, to date, in FY 2009.

201-6, HRS, "Petition for Regulatory Review"

Since its inception, the SBRRB has received one petition in FY 2005.

In FY 2009 and FY 2010, the SBRRB anticipates receiving at least one petition per fiscal year.

PROJECTS AND ACTIVITIES

The following activities were performed throughout the year.

▪ **Election of Officers** – In June 2008 the Board elected officers for the 2009 fiscal year. Ms. Lynne Woods was re-nominated as Chairperson for the fourth year. Ms. Sharon L. Pang was re-nominated as Vice Chairperson and Mr. Michael Yee was re-nominated as Second Vice Chairperson, both for the third year.

▪ **Member Nominations and Recruitment** – The Board continues to actively recruit new members pursuant to Section 201M-5, “nominations to fill vacancies shall be made from names submitted by the review board.” Further, “the appointments shall reflect representation of a variety of businesses in the State; provided that no more than two members shall be representatives from the same type of business, and that there shall be at least two representatives from each county.”

To date, the Board has one vacancy, representing the Island of Kauai. In April of this year, the Board's newest member from the Island of Hawaii, Mr. David S. De Luz, Jr., began his four-year term, and three existing members, Messrs. Dorvin Leis, Michael Yee, and Donald Dymond were re-instated to new four-year terms.

In addition, in November 2008, the Board unanimously agreed that the following re-nominations of Board members Ms. Sharon L. Pang, Mr. Charles Au and Mr. Peter Yukimura be submitted to the Governor.

COMMUNICATIONS PLAN

In keeping in line with the Board's strategic plan and DBEDT's Yearly Annual Plan, this section outlines a portion of the communications plan created by Hastings & Pleadwell. The members incorporated this plan throughout fiscal 2007 and 2008 and 2008. It is the Board's goals to position itself as an experienced and responsible asset in the eyes of the Hawaii business world.

▪ **Presentation Training** – In keeping with its communications plan, and with the assistance of Hastings and Pleadwell, in August 2008 the members were provided presentation training coinciding with the Board's designed power point presentation.

The Review Board members made presentations on the following dates:

- September 16, 2008 – National Federation of Independent Business – Maui Pals, Kahului, Maui
- September 17, 2008 – National Federation of Independent Business – Ala Moana Hotel, Oahu
- September 18, 2008 – National Federation of Independent Business – JJ's Broiler, Lihue, Kauai

- October 24, 2008 – National Federal of Independent Business –
Townhall Teleconference

▪ **Hawaii Small Bill of Rights Brochure** – In fiscal 2006, the Board initiated a taskforce to develop and design the “Hawaii Small Business Bill of Rights” brochure. The brochure was created from the Small Business Bill of Rights bill introduced in the 2005 legislative session (Senate Bill 1380 SD2 HD2). With the assistance of Hastings & Pleadwell and Mr. Steven Bretschneider, DBEDT’s Marketing Officer, the brochure was created. In December 2007, the brochure was formally launched.

During the 2008 legislative session, yet another bill was initiated by the legislation introducing the Small Business Bill of Rights, HB2637, “Relating to the Small Business Bill of Rights.” This bill was incorporated into HB 2781, “Relating to Small Business,” which not only establishes the Small Business Bill of Rights, but also directs State agencies to perform a more rigorous examination and justification of rules, directs this Board to convene a “working group” to study and make recommendations to resolve concerns related to chapter 201M, HRS, and to report to the 2009 legislature any recommended legislation. The “Working Group” submitted its recommendations to the legislature in December 2008. (See Section II, pages 5-6 of this report).

▪ **Power Point Presentation** – During fiscal 2009, with the assistance of Hastings and Pleadwell, the Board redesigned its power point presentation to present at small business functions and forums.

▪ **Press Releases and Articles** – The following press releases, articles and television announcements referencing the Board were published over the past year:

“Bill of Rights aids small businesses” – *The Honolulu Advertiser.com* – 12-25-07
 “Hawai’i’s Small Business Regulatory Review Board Publishes “Small Business Bill of Rights” Brochure” – *Office of Advocacy State Reg Flex Roundup* – December 2007
 “Small Business Bill of Rights Brochure Published” – *Small Business News* - December 2007
 “Small Business Caucus Supports Small Business Bill of Rights” – *Hawaii Reporter* - February 2, 2008
 “Business bill of rights considered” – *The Honolulu Advertiser* – 2-13-08
 “Taking a liq-ing” – *Honolulu Weekly* - 5-11-08
 “SBH Selected Bill Watch – HB2736 HD1 - Creates the Small Business Bill of Rights” – *Small Business News* – March 2008
 “Viewpoint: Board asks county to redraft proposed beach business” – Letters to the Editor - *The Maui News* – March 2008
 “Small-business bill of rights awaits governor’s signature” – *The Honolulu Advertiser* - June 2008
 “Governor Was Urged to Sign SB Bill of Rights” – *Small Business News* – August 2008
 “Boaters’ suit against state still on appeal” – *Honolulu Star Bulletin* – August 8, 2008
 “Ask-Small Biz-Experts” – go to: <http://www.hawaiibusiness.com/Small Biz/Ask-Small Biz-Experts> – September 19, 2008
 “Small business owners to get alerts” – *The Honolulu Advertiser* – September 18, 2008
 “State’s ‘RegAlert’ program used for first time” – *The Honolulu Advertiser* – October 15, 2008
 “Small Business Regulatory Review Board Announces First “RegAlert”” – *Hawaii Reporter* – October 15, 2008
 “Smokers light up as law goes unenforced” – *The Pacific Business News* – November 7, 2008
 “Board OKs harbor plan” – *The Honolulu Advertiser* – November 24, 2008

In addition to the above articles, KHNL Channel 8 announced the Conferring of Commission Ceremonies where Mr. Dorvin Leis was to be sworn in as a member of the Small Business Regulatory Review Board, on June 25, 2008.

ADMINISTRATIVE RULE REVIEW REQUESTED BY SMALL BUSINESS

In compliance with Section 201M-5 (f), HRS, the following outlines administrative rules and legislative issues requested by small business owners for the Board to review from the period December 2007 to December 2008.

1. Michael Sheehan, Hanalei River Boatyard At the River, Hanalei, Kauai

Mr. Michael Sheehan, president of Hanalei River, Inc., Hanalei River Holdings, Hanalei-Kalihiwai River fisheries, and Bali Hai Tours, approached this Board at the end of 2007, which carried over into 2008, regarding conflicting permit issues with the County of Kauai and the State of Hawaii's Department of Land and Natural Resources (DLNR) over the past several years. Mr. Sheehan is unable to operate his boatyard to its full capacity as the State is currently not issuing boating permits.

Board Recommendation: The Board requested that a County of Kauai representative a subsequent Board meeting along with a DLNR representative in an attempt to resolve Mr. Sheehan's concerns

Status: As of this writing, the Board has been kept apprised of Mr. Sheehan's request and will resume this matter if necessary.

2. Dale Evans, Charley's Taxi

Ms. Dale Evans, president of Charlie's Taxi, approached this Board in November 2008 regarding the "request and notice of taxicab fuel surcharge implementation." Although Ms. Evans petitioned this Board in regards to Section 201M-2, HRS, "Determination of small business impact; small business impact statement," this section played no role in her specific request. Specifically, Ms. Evans' request entailed concern with the Honolulu City and County of Honolulu regarding a taxicab

fuel surcharge approved by the Honolulu City Council on June 6, 2008.

Subsequently, due to the need to promulgate rules, the industry had been informed that implementation of the surcharge was not anticipated until January 1, 2009. As a result of the delay, Honolulu taxicab drivers continued to suffer economic losses and severe hardship from fuel cost increases.

Board Recommendation: The Board recommended that correspondence be sent to the Mayor of the City and County of Honolulu requesting that, effective immediately, an emergency measure be implemented to allow taxicab drivers the ability to assess up to one dollar (\$1.00) per trip until such time that the rules are promulgated and adopted, with the requirement that all drivers maintain signage to be posted inside the taxicabs informing the paying customers of such a charge. In addition, it was recommended that the provision to implement a fuel surcharge should be optional, and that it not require the fuel surcharge be put in the meter rate(s) so as to avoid requiring the drivers to change the meter rate settings.

Status: In November 2008, correspondence was sent to the City and County of Honolulu Mayor Hannemann with a copy to Mr. Dennis Kamimura, Licensing Administrator at the Department of Motor Vehicles. As of this writing, no response has been received from either this Board or Ms. Evans nor has there been any action taken by the City and County of Honolulu regarding the Board's recommendation.

3. **John F. De Virgilio**

Mr. John F. De Virgilio approached this Board in November 2008 regarding a regulatory review against the Office of Consumer Protection (OCP) for not following due process in its implementation of state laws regarding new post-secondary schools. Specifically, Mr. De Virgilio requested that the Board review the practices of the

OCP against his now defunct start-up company, a special post-secondary institution for physical education and the martial arts.

Board Recommendation: The Board recommended that it request from OCP the administrative rules that govern its actions and procedures and if it is found that such administrative rules exist, the Board would request copies of any and all documents sent to Mr. De Virgilio from OCP.

Status: As of this writing, the Board is researching whether or not there are administrative rules that govern OCP's practices.

4. **Ken Schmitt, Hike Maui and Maui Canyon Adventures**

In December 2008, Mr. Ken Schmitt submitted an email to the Board Chair regarding requesting a permit from the Board of Land and Natural Resources to conduct commercial hiking tours on a parcel of unencumbered state land in Maui.

Board Recommendation: NA

Status: As of this writing, the full Board has not reviewed Mr. Schmitt's issues; they are expected to be heard at the January 2009 board meeting.

SECTION II

LEGISLATIVE REVIEW

The Review Board monitored and provided testimony on the following bills during the 2008 legislative session.

1. **House Bill 2781, HD2 SD2 CD1 “Relating to Small Business”**

Background: This bill establishes the Small Business Bill of Rights, which incorporated HB 2637, “Relating to the Small Business Bill of Rights,” (see below) and also requires agencies to perform a more rigorous examination and justification of rules that impose standards stricter than comparable federal, state or county law. In addition, it directs the small business regulatory review board to convene a working group to study and make recommendations to resolve concerns related to chapter 201M, HRS, and report to the 2009 legislature any recommended legislation.

Board Recommendation: The Board supported this bill.

Status: On July 8th the Governor allowed the bill to become law as Act 130.

Note: The “working group” convened its first meeting on September 3rd to discuss its role as mandated by the legislature. (See page X at the end of this section for a report and information on the “Working Group.”)

2. **House Bill 2257, “Relating to Public Accountancy”**

Background: This bill authorizes out-of-state certified public accountants to practice temporarily in the State without a license.

Board Recommendation: The Board supported the intent of this bill.

Status: The bill was deferred.

3. **House Bill 2258, “Relating to Public Accountancy”**

Background: This bill authorizes out-of-state certified public accountants to practice temporarily in the State without a license.

Board Recommendation: The Board supported the intent of this bill.

Status: The bill was deferred.

4. House Bill 2253, “Relating to Amending or Repealing Various Provisions of Chapter 281, HRS, Intoxicating Liquor, for the Purpose of Clarifying Language, Correcting Errors, and Deleting Unnecessary and Obsolete Provisions”

Background: This bill amends sections of Chapter 281, HRS, to update the liquor laws.

Board Recommendation: The Board presented testimony requesting that the original language be reinstated rather than modify the existing law, of which the legislators were in concurrence.

Status: The bill was passed and transmitted to the Governor for adoption into law.

5. HB2974, “Relating to Labor”

Background: This bill certifies as exclusive representatives absent an election where no other representatives are certified as the exclusive representatives. The bill requires immediate collective bargaining between parties once entities are certified as exclusive representatives; to be effective July 1, 2008.

Board Recommendation: The Board submitted a memorandum to the Governor to veto the bill and a memorandum to committee chairs and vice chairs not to override the Governor’s veto, respectively.

Status: The bill was passed and the Governor vetoed, with no legislative override.

6. HB2686 HD1, “Relating to Administrative Procedure”

Background: This bill amends the procedure for the adoption, amendment, or repeal of rules to conform to federal law.

Board Recommendation: The Board supported the intent of this bill.

Status: The bill was referred to the Judiciary Committee.

7. Gubernatorial Nominee 330 – Donald L. Dymond

Background: This gubernatorial nomination nominates Mr. Donald Dymond as a member to the Small Business Regulatory Review Board for a four-year term.

Board Recommendation: The Board supported Mr. Dymond’s nomination.

Status: Mr. Dymond was ratified as a member of the Small Business Regulatory Review Board by the Senate in April 2008.

8. Gubernatorial Nominee 331 – Dorvin Leis

Background: This gubernatorial nomination nominates Mr. Dorvin Leis as a member on the Small Business Regulatory Review Board for a four-year term.

Board Recommendation: The Board supported Mr. Leis’ nomination.

Status: Mr. Leis was ratified as a member of the Small Business Regulatory Review Board by the Senate in April 2008.

9. Gubernatorial Nominee 332 – Michael C.L. Yee

Background: This gubernatorial nomination nominates Mr. Michael C. L. Yee as a member of the Small Business Regulatory Review Board for a four-year term.

Board Recommendation: The Board strongly supported Mr. Yee’s nomination.

Status: Mr. Yee was ratified as a member of the Small Business Regulatory Review Board by the Senate in April 2008.

10. Gubernatorial Nominee 605 – David S. De Luz, Jr.

Background: This gubernatorial nomination nominates Mr. David S. De Luz, Jr., as a new member on the Small Business Regulatory Review Board for a four-year term.

Board Recommendation: The Board supported Mr. De Luz’s nomination.

Status: Mr. De Luz, Jr. was ratified as a member of the Small Business Regulatory Review Board by the Senate in April 2008.

In addition to above bills, Governor Lingle requested that this Board contacted Chairperson Woods requesting that this Board

11. HB 2843 HD2 SD2 CD1, “Relating to Invasive Species” – Act 3

Background: This Act was passed in the 2008 legislation during a special session that overrode the Governor’s veto. The Act entails large business impact. The rule-making agencies have been instructed to create rules which will eventually come to this Board.

Board Recommendation: None at this time

Status: Awaiting the proposed administrative rules.

12. SB 2843 SD2 HD2 CD1, “Relating to Electronic Device Recycling” – Act 13

Background: This Act was passed in the 2008 legislation during a special session that overrode the Governor’s veto. The Act entails large business impact. The rule-making agencies have been instructed to create rules which will eventually come to this Board.

Board Recommendation: None at this time

Status: Awaiting the proposed administrative rules.

REPORT FROM THE SMALL BUSINESS REGULATORY REVIEW BOARD “WORKING GROUP”

The Small Business Regulatory Review Board “Working Group” was created pursuant to Act 230, SLH 2008, entitled “Relating to Small Business.” Part III of Act 230 provides:

(a) The small business regulatory review board shall convene a working group to review the process and procedures related to rulemaking, as established under chapter 201M, Hawaii Revised Statutes.

(b) The working group shall include but not be limited to representatives of small business organizations, the department of business, economic development, and tourism, the department of commerce and consumer affairs, and others as deemed appropriate. The chairperson of the small business regulatory review board shall serve as chair of the working group.

(c) The working group shall review and make recommendations regarding the rulemaking provisions under chapter 201M, Hawaii Revised Statutes, in particular:

(1) Whether the current statutes are adequate to meet the concerns of small business;

(2) What concerns have been raised by small businesses, the small business regulatory review board, or government agencies in implementing the statutes;

(3) The level of difficulty in adequately meeting the requirements of statutes; and

(4) Any other issues that may arise during the review.

(d) The small business regulatory review board shall submit the findings and recommendations of the working group, including any legislation necessary to implement the recommendations, to the legislature no later than twenty days prior to the convening of the regular session of 2009.

Working group members held their first meeting in Honolulu on September 3, 2008, in an effort to understand the underlying goals of the working group. The group members consisted of Chair Lynne Woods, Vice Chair Sharon Pang, Donald Dymond, David S. De Luz, Jr., Representative Kyle Yamashita, Tim Lyons, Melissa Teves Pavlicek, Dale Evans, Paul Yuen, and Dori Palcovich. After four meetings, the working group finalized its proposed report to the legislation that was approved by the Board on November 19, 2008, and submitted to the legislature in December 2008.

Appendices

- 1. Chapter 201M, Hawaii Revised Statutes**
- 2. Board Member Listing**
- 3. Administrative Rules Reviewed**
- 4. Administrative Directive 99-02**

1. Chapter 201M, Hawaii Revised Statutes

CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Section

- 201M-1 Definitions
- 201M-2 Determination of small business impact; small business impact statement
- 201M-3 Small business statement after public hearing
- 201M-4 Advisory committee on small business; consultation process for proposed rules
- 201M-5 Small business regulatory review board; powers
- 201M-6 Petition for regulatory review
- 201M-7 Periodic review; evaluation report
- 201M-8 Waiver or reduction of penalties
- 201M-9 Executive order

§201M-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as established in section 201M-4.

"Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches.

"Board" means the small business regulatory review board.

"Rule" shall have the same meaning as in section 91-1.

"Small business" means a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

§201M-2 Determination of small business impact; small business impact statement. (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

- (b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:
- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
 - (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
 - (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
 - (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
 - (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
 - (6) How the agency involved small business in the development of the proposed rules; and

- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state or county law. The agency shall also include an explanation of its decision to impose the higher standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
- (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
- (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
- (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
- (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.

- (d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c230, §3]

[\$201M-3] Small business statement after public hearing. For any proposed rules that affect small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
- (2) The number of persons who:
 - (A) Attended the public hearing;
 - (B) Testified at the hearing; and
 - (C) Submitted written comments; and
- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

[\$201M-4] Advisory committee on small business; consultation process for proposed rules. (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on

small business regarding any matter related to the proposed rules prior to complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

§201M-5 Small business regulatory review board; powers. (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule or to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34. Nominations to fill vacancies shall be made from names submitted by the review board. The appointments shall reflect representation of a variety of businesses in the State; provided that no more than two members shall be representatives from the same type of business, and that there shall be at least two representatives from each county.

(c) All members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4]

§201M-6 Petition for regulatory review. (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or

(6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(d) If the board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (c), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (b). The legislature may subsequently take any action in response to the evaluation report and the agency's response as it finds appropriate.

(e) If the board does not recommend that an agency initiate rulemaking proceedings, the board shall notify the small business of its decision and inform the small business that the small business may submit a complaint to the ombudsman pursuant to chapter 96 regarding the decision of the agency or board.

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

§201M-7 Periodic review; evaluation report. (a) Each agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

(b) The small business regulatory review board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the next regular session of the legislature. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any

legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6]

§201M-8 Waiver or reduction of penalties. (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
- (2) The violation was unintentional or the result of excusable neglect; or
- (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.

(b) Subsection (a) shall not apply:

- (1) When a small business fails to exercise good faith in complying with the statute or rules;
- (2) When a violation involves willful or criminal conduct;
- (3) When a violation results in serious health and safety impacts;
- (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
- (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
- (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6)(A), (B), (C), and (D).

(c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

[§201M-9] Executive order. The governor may execute any executive order, memorandum, or directive necessary to

implement any provision of this chapter. [L 1998, c 168, pt
of §2, §5; am L 2002, c 202, §5]

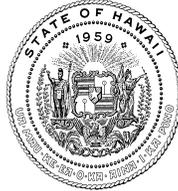
2. Board Member Listing

Island	Member	Company	Address	Discussion Leader	E-mail
Maui	Lynne Woods (Chairperson)	Maui Real Estate Ventures, Inc.	373 Kolahala Drive Kula, Maui, HI 96790	Department of Commerce & Consumer Affairs, Office of the Governor, Public Utilities Commission	lynne@billwoods.com
Oahu	Sharon L. Pang (Vice Chairperson)	Care Companions & Consulting, LLC	1400 Pensacola Street, Suite 505 Honolulu, HI 96822	Department of Health-Medical Division, Department of Human Services, Department of Commerce and Consumer Affairs (Back-up)	carecompanions@hawaiiintel.net
Oahu	Michael C. L. Yee (2nd Vice Chairperson)	EnviroServices & Training Center, LLC	505 Ward Avenue, Suite 202 Honolulu, HI 96814	Department of Health-Environmental Division, Department of Land and Natural Resources	mike@gotoetc.com
Maui	Dorvin Leis	Dorvin D. Leis, Co., Inc.	1100 Alakea Street, Ste 1400, Honolulu, HI 96813	Department of Accounting & General Services, Office of the Lieutenant Governor	jadel@lleisinc.com
Oahu	Donald L. Dymond	Kalapawai Market	306 S. Kalaheo Ave. Kailua, HI 96734	Department of Budget & Finance – Finance Division, Public Utilities Commission (Back-up), Department of Attorney General	mdymond@hawaii.rr.com
Oahu	Charles K.H. Au	Edwin Cabrinha & Au, LLP	598 Halekauwila Street Honolulu, HI 96813	Department of Taxation, Department of Hawaiian Home Lands, Department of Education, Department of Public Safety	charles@eca-advisors.com
Hawaii	Richard Schnitzler	Hamakua Macadamia Nut Co.	P.O. Box 44715 Kawaihae, HI 96743	Department of Agriculture, Department of Business, Economic Development & Tourism, Dept. of Land & Natural Resources (Back-up)	hawnnut@hialoha.net
Oahu	Bruce E. Bucky	Hildgund Jewelry	1188 Bishop Street, Suite 2305 Honolulu, HI 96813	Department of Human Resources, Department of Transportation, Department of Business, Economic Development and Tourism (Back-up)	Hildgund@aol.com
Kauai	Peter Yukimura	Koa Trading Co.	PO Box 1031 Lihue, HI 96766	Department of Defense	pmyuki@hawaiian.net
Hawaii	David S. De Luz, Jr.	Big Island Toyota	811 Kaneohehula Avenue Hilo, HI 96720	Department of Labor and Industrial Relations, University of Hawaii, Department of Transportation (Back-up)	djr@bigislandtoyota.com

3. Administrative Rules Reviewed

	Month/Year	Support	Oppose	No Comment	Support w/Rec.	Sup. w/Res.	Support/Oppose	Pending
	FY 2000 to FY 2005	159	8	3	14	11	2	
FY 2006	Jul-05	4						
	Sep-05	10						
	Oct-05	2			1			
	Nov-05	7					1	
	Dec-05	3				1		
	Jan-06	1						
	Feb-06	0						
	Apr-06	8			1			
	May-06	4						
	Jun-06	4						
FY 2007	Jul-06	3						
	Aug-06	3						
	Sep-06	1						
	Oct-06	2						
	Nov-06	8		2				
	Jan-07	3		1				
	Feb-07	3		1				
	Mar-07	9						
	Apr-07	9						
	May-07	5						
	Jun-07	3						
	FY 2008	Jul-07	-					
Aug-07		5	1					
Sep-07		2			1			
Oct-07		9						
Nov-07		0						
Jan-08		8			1			
Feb-08		2		1				
Mar-08		3						
Apr-08		4						
May-08		3		3			1	
Jun-08		0						
FY 2009		Jul-08	6					
	Aug-08	3		1				
	Sept-08	4						
	Oct-08	4						
	Nov-08	3		1				
	Dec-08	0						
	Totals	307	9	13	18	12	4	0

4. Administrative Directive 99-02



EXECUTIVE CHAMBERS
HONOLULU

BENJAMIN J. CAYETANO
GOVERNOR

August 2, 1999

ADMINISTRATIVE DIRECTIVE NO. 99-02

To: All Department Heads

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It rescinds Administrative Directive No. 94-04, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated July 28, 1994.

Legal Reference:

Section 91-3(c), Hawaii Revised Statutes, provides that, "the adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor."

Section 2 of Act 168, Session Laws of Hawaii 1998, enacted the "Hawaii Small Business Regulatory Flexibility Act," which requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board and to any departmental advisory committee on small business; unless the proposed rule is being promulgated on an emergency basis or in accordance with a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute, such as a federally-mandated regulation which affords the department or agency no discretion to consider less restrictive alternatives.

Policy:

Whenever any department or agency requests executive approval for the proposed adoption, amendment, or repeal of a rule, the director of the department or agency shall ensure that the proposed changes conform to existing legal provisions, especially those provisions of Chapter 91, Hawaii Revised Statutes, and current administrative rules. In requesting the adoption, amendment, or repeal of any rule, the director shall fully explain or submit the following:

1. Exact changes to be made and the reasons for the changes, including a justification for the proposed adoption, amendment, or repeal of any rule. If applicable, the present rule shall be cited and the proposed rule shall be quoted in full without paraphrasing.
2. Manner in which the proposed adoption, amendment, or repeal of the rules would affect the operations or programs of the department or agency in terms of responsibilities, functions, activities, and inter-relationships, both internal and external.
3. Final result (e.g. a program improvement/clarification of statute) to be expected by instituting the proposed adoption? amendment, or repeal of a rule.
4. Program and financial impact on the State upon the adoption, amendment, or repeal of the rules. This should include the:
 - a. Long- and short-range program impact, and
 - b. Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates of anticipated savings or funding shortfalls projected over the subsequent four-year planning period.
5. Long- and short-term impacts on the public, on economic growth and the economy of the State.
6. Other alternatives explored in attempting to resolve the problem or situation at hand other than that of adopting, amending, or repealing the rules in question.

7. A determination as to whether the proposed rule will affect small business. For purposes of this Directive, a proposed rule will affect small business if the proposed rule will be applied to a for-profit enterprise consisting of fewer than 200 full-time or part-time employees, and will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

If a proposed rule affects small business, the department or agency shall discuss:

Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposed rule;

b. Whether it has considered creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rule;

c. Whether it has prepared a Small Business Impact Statement” that has been submitted to the Small Business Regulatory Review Board and to any departmental advisory committee on small business for its respective consideration and recommendation, in the manner described in § -2 of Section 2, Act 168, SLH 1998; and

d. Whether any recommendation was made by the Small Business Regulatory Review Board and the departmental advisory committee on small business regarding the proposed rule; and, if the recommendation was not adopted, an explanation for not adopting the recommendation.

Procedure:

Prior Approval for Public Hearing.

Prior to formal publication of notice of public hearing on the proposed adoption, amendment, or repeal of any rule, departments and agencies shall:

- a. Obtain the Attorney General’s approval as to form prior to

submitting the rule to me for approval for public hearing;

- b. Provide me with a copy of the proposed rule, including the information requested in Items 1 through 7 above. A copy of the requested information and a copy of the proposed rule shall be concurrently provided to the Director of Budget and Finance and to the Director of Business, Economic Development, and Tourism;
- c. Prepare and submit a Small Business Impact Statement” as required by Item 7 of the previous section; and
- d. Obtain my approval for public hearing on any rule to be adopted, amended, or repealed.

2. Notice of Public Hearings.

If any proposed rule affects small business, the notice of public hearing shall summarize any business impact described in the Small Business Impact Statement,” and shall state any new fee or compliance burdens that will affect small business.

3. Final Approval of Proposed Rule After Public Hearing.

Departments and agencies shall obtain my final approval for the adoption, amendment, or repeal of any rule after the required public hearing has been held. In requesting final approval, the director of the department or agency concerned shall:

- a. Indicate whether the facts and circumstances regarding the proposed adoption, amendment, or repeal of any rule has changed, compared to that information that was sent to me before the public hearing;
- b. Provide a copy of the proposed rule to the Attorney General for approval as to form prior to submitting the rule to my office for final approval;
- c. Describe any changes that have been made to the proposed rule following public hearing, by explaining these changes and providing me with any updates of information requested in Items 1 through 7 of the above-stated Policy section. A copy of this information shall be concurrently sent to the Director of Budget and Finance, the Director of Business, Economic Development, and Tourism, and the Attorney General;

If the changes are determined to be substantial or material by the Attorney General, an additional public hearing shall be held. In these situations, the previous procedures related to my prior approval to proceed to public hearing shall be followed;

- d. Indicate whether the proposed rule affects small business; and, if so, whether a "Small Business Statement," which provides the information described in § -3 of Section 2, Act 168, SLH 1998, has been submitted to the Small Business Regulatory Review Board and the departmental advisory committee on small business; and
 - e. Submit three copies of the proposed adoption, amendment, or repeal of the rule in standard format and in accordance with Chapter 91, HRS, for my final approval. The original and a copy of the rules adopted by the department or agency shall be signed by the director of the department; or by the chairperson of a board or commission when the rule has been adopted by a board or commission which is assigned to a department for administrative purposes; or by the chairperson of the board or commission of a principal department; and by the Attorney General or the duly appointed Deputy Attorney General. The third copy may have a facsimile of the required signatures.
4. Distribution of Approved Adopted Rules.
- a. A complete set of three copies approved by me shall be filed at the Office of the Lieutenant Governor.
 - b. The Office of the Lieutenant Governor shall provide one copy to the agency adopting, amending, or repealing the rule.
 - c. Each department or agency adopting, amending, or repealing the rule shall submit one file-stamped and certified copy of the rule in the Ramseyer and standard formats to the Legislative Reference Bureau.

Your full and prompt cooperation in complying with provisions of this administrative directive is essential.


NJAMIN J. CAYETANO

5. Small Business Regulatory Review Board

Goals 2009



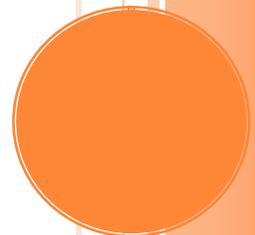
Small Business Regulatory Review Board

GOALS 2009

Prioritized Goals

At a workshop today, the Small Business Regulatory Review Board adopted four “signature goals” for its 2008-2009 year. This report records the members’ goal-setting process and decisions.

Thomas J. Mitrano, Facilitator
Thomas J. Mitrano, Inc.
www.Mitrano.com



GOALS 2009

Goals Adopted

At its meeting today, the members of the Small Business Regulatory Review Board adopted a resolution setting out its four “signature goals” for its 2008-2009 year. The goals adopted were:

- Implementing its Regulatory Alert program in concert with its organizational partners
- Hiring an intern assistant for its Board Liaison
- Developing and implementing a coordinated public outreach and identification program
- Preparing for eventual implementation of the Bill of Rights and Impact Statement legislation it advocates

The Board’s Chairperson, Lynne Woods, is to work with its Board Liaison and present to the members at the next Board meeting a proposal that sets out what needs to be done when (calendar, milestones, timeline), by whom, how, with what measure of outcome in order to have a plan for accomplishing the adopted goals.

This report sets out below the process the Members used to select these goals and provides additional information about each of the goals and the members’ intentions about implementation of the goals, which they contributed during the process.

GOALS 2009

Accumulated Goals

At its meeting today, the members engaged the services of Tom Mitrano, principal consultant at his own firm, Thomas J. Mitrano, Inc., to facilitate their work.

The facilitator first conducted a non-judgmental brainstorming process during which the members accumulated 17 proposed goals. The list of contributed proposals is set out here:

#	Goal	Comment
1	Develop a new impact statement	
2	Hire consultants to do through reviews on selected topics	E.G. board picks a long-time area, like HIOSH, PUC, or Health Department, hires a consultant to zero-in on peoples' concerns and do a thorough analysis. Then, Board work with the agency or otherwise as indicated by the review. Goal: cover a few important things very thoroughly. PII would have to create a supporting budget, but with the Board's help, she will do that. If hire an attorney to do this, hiring process is handled through the AG's office and is not subject to the normal hiring process. The Board needs to prepare the job description, scope of work, and likely cost, then work with PII to develop proposal and budget to move forward.
3	RegAlert	Include comments from this morning and with the partners at lunch working meeting. This is a terrific opportunity to clarify to others what the Board is all about. The measurement piece (if we made a difference, how) is very important. Need to be clear to Dori what to do with information she receives for the Board as a result of the RegAlert program. Use a web-based library, compile results, and comply with any relevant regulations.
4	Public presentations	Include items from this morning's session.
5	Potential legislative advocacy program	
6	Getting business owners to be more aware of us	
7	Make a list of "top-10 list" of worst regulations	
8	Bill of rights: where do we go from here	

#	Goal	Comment
9	Getting an assistant for Dori approved	Concerns about staff time available for everything. This has been on hold, but PII will review. PII makes her staff available to help with Board work. Issue: assess at what level to provide this resource to the Board: clerical (Secretary II? Other?)? Semi-advocate level? There might be as much as a \$20,000 difference in salary between a Secretary II and a more executive level hire. Are there leveraged ways to provide the Board the resources it needs? Are there special, ad hoc resources PII can provide? Can Dori be freed of responsibility for some of the clerical work she does now? (Calling, following up, preparing packets, other?) What funding or timing deadlines are we up against in order to move ahead on this issue?
10	Biannual review: 201(m)(7)	
11	Develop a “who we are” tag line or statement or program	
12	Advocacy as our “brand”=?	
13	Board “Award” program	
14	More outreach to “partner” organizations like today’s lunch meeting	
15	Push for rules that are not higher than “Federal standards”	
16	Two meetings of the board each month	
17	Set up task force-type ways to substitute for more board meetings	

GOALS 2009

Prioritized Goals

Next, the facilitator assisted the members through a process to clarify their intent as to the significance of goals they would adopt. In brief, at the recommendation of the Board Chairperson, the members agreed that a goal would be a special activity the members would select as a “signature” initiative for the coming Board year. There would be other non-“goal” activities undertaken, of course; however, they felt it would be appropriate for the Board to select, announce, implement, and stand accountable for a few important activities they would call “goals.”

With this definition at hand, the facilitator prompted the members to review their list of accumulated goals and identify those contributions they would consider for adoption as such a “goal” for the 2008-2009 board year and those contributions they would not consider for adoption this year. The facilitator also collected “votes” of the members in support of the prioritization. The list of selected and deferred goals and “votes” is set out here:

PTY	Votes	#	Goal	Comment
A	10	3	RegAlert	Include comments from this morning and with the partners at lunch working meeting. This is a terrific opportunity to clarify to others what the Board is all about. The measurement piece (if we made a difference, how) is very important. Need to be clear to Dori what to do with information she receives for the Board as a result of the RegAlert program. Use a web-based library, compile results, and comply with any relevant regulations.
A	09	4	Public presentations	Include items from this morning’s session.
A	06	1	Develop a new impact statement	
A	06	6	Getting business owners to be more aware of us	
A	05	12	Advocacy as our “brand”=?	
A	04	7	Make a list of “top-10 list” of worst regulations	
A	03	8	Bill of rights: where do we go from here	
A	03	14	More outreach to “partner” organizations like today’s lunch meeting	
A	01	5	Potential legislative advocacy program	

PTY	Votes	#	Goal	Comment
A	01	9	Getting an assistant for Dori approved	Concerns about staff time available for everything. This has been on hold, but PII will review. PII makes her staff available to help with Board work. Issue: assess at what level to provide this resource to the Board: clerical (Secretary II? Other?)? Semi-advocate level? There might be as much as a \$20,000 difference in salary between a Secretary II and a more executive level hire. Are there leveraged ways to provide the Board the resources it needs? Are there special, ad hoc resources PII can provide? Can Dori be freed of responsibility for some of the clerical work she does now? (Calling, following up, preparing packets, other?) What funding or timing deadlines are we up against in order to move ahead on this issue?
C	09	10	Biannual review: 201(m)(7)	
C	08	16	Two meetings of the board each month	
C	06	2	Hire consultants to do through reviews on selected topics	E.G. board picks a long-time area, like HIOSH, PUC, or Health Department, hires a consultant to zero-in on peoples' concerns and do a thorough analysis. Then, Board work with the agency or otherwise as indicated by the review. Goal: cover a few important things very thoroughly. PII would have to create a supporting budget, but with the Board's help, she will do that. If hire an attorney to do this, hiring process is handled through the AG's office and is not subject to the normal hiring process. The Board needs to prepare the job description, scope of work, and likely cost, then work with PII to develop proposal and budget to move forward.
C	05	13	Board "Award" program	
C	03	17	Set up task force-type ways to substitute for more board meetings	
C	02	15	Push for rules that are not higher than "Federal standards"	
C	01	11	Develop a "who we are" tag line or statement or program	

GOALS 2009

Clustered Goals

Next, the facilitator asked the members to set aside all but the “A” proposals and to consider combining similar goals in order to help select out the most significant goals. When this process was completed, there remained four clusters of goals. The list of clustered goals is set out here (the variant shading represents different goals clustered together).

Votes	#	Goal	Comments
10	3	RegAlert	Combine 3 and 5. Include comments from this morning and with the partners at lunch working meeting. This is a terrific opportunity to clarify to others what the Board is all about. The measurement piece (if we made a difference, how) is very important. Need to be clear to Dori what to do with information she receives for the Board as a result of the RegAlert program. Use a web-based library, compile results, and comply with any relevant regulations.
01	5	Potential legislative advocacy program	
01	9	Getting an intern assistant for Dori approved	Concerns about staff time available for everything. This has been on hold, but PII will review. PII makes her staff available to help with Board work. Issue: assess at what level to provide this resource to the Board: clerical (Secretary II? Other?)? Semi-advocate level? There might be as much as a \$20,000 difference in salary between a Secretary II and a more executive level hire. Are there leveraged ways to provide the Board the resources it needs? Are there special, ad hoc resources PII can provide? Can Dori be freed of responsibility for some of the clerical work she does now? (Calling, following up, preparing packets, other?) What funding or timing deadlines are we up against in order to move ahead on this issue?
		Public and Government Awareness	Include #s 4, 6, 7, 11, 12, 14
09	4	Public presentations	Include items from this morning’s session.
06	6	Getting business owners to be more aware of us	
04	7	Make a list of “top-10 list” of worst regulations	
	11	Develop a “who we are” tag line or statement or program	
05	12	Advocacy as our “brand”=?	
03	14	More outreach to “partner” organizations like today’s lunch meeting	

Votes	#	Goal	Comments
06	1	Bill of Rights and Develop a new impact statement	Combine 1 and 8. If governor signs or there is an override vote by Legislature, this will be an "A" signature initiative. If the Governor vetoes or there is no override vote, this is still an "A"; therefore, it is a goal.

GOALS 2009

Additional Discussion of Some Goals

Over the course of the workshop, the members at various times held conversations and deliberations touching on what turned out to be several (not all) of their adopted goals. The facilitator took notes and here excerpts from his notes information relevant to several of the adopted goals. The following is not an exhaustive treatment of or plan for the goals, but comprises important opinions and information the members will use as they design a plan to implement their goals.

Implementing its Regulatory Alert program in concert with its organizational partners

- Will be meeting over lunch today with partners to discuss going forward together.
- We don't want the workload of maintaining data bases.
- Need to figure out how to be sure recipients of alerts don't get extra (irritating) copies of an alert.
- Also, need to consider carefully the form of the alert, e.g. being careful how we compose the Subject line.
- Responses to alerts will go back to DBEDT, through Dori
- What comes back will be received as "testimony," that is, we will take it seriously and include it as part of the record of public input when we address matters.
- We can position this as a benefit to partner organizations to offer their members.
- It's a good public initiative that can fit in with our speakers bureau activities.
- How about estimating the number of alerts? Maybe 1 or 2 a quarter. So, we need to be careful how we get paid attention to and have impact.
- Getting impact probably means we need to call for some action, not just provide information or educate readership.
- Can use these as "press releases" for media? Yes; and not just as issue alerts, but also as a way to highlight the Board and its role.
- DBEDT and H&P have good media distribution lists.
- Go in teams
- Figure out a way to "say" who we are
- Be careful not to "promise" everybody that SBRRB will provide all critical information. Include some form of disclaimer.

During the workshop, the members met with invited organizational partners over a working lunch to discuss the Regulatory Alert program and accumulated a number of comments and collaborative guiding principles. Here is the list:

- Board wants this operational no later than August.
- Intends to roll out through publicity channels: radio, television.
- Frequency: We expect 3 or so a quarter.
- Response time frame will typically be less than a month, sometimes a couple of weeks.
- We will share and update the distribution channels: from SBRRB to whom, from recipients to members.
- The Board will maintain a web site and let partners link to that web site.
- Another RegAlert "distribution channels: media programs that are already sponsored by the partners: radio, PSAs, etc.
- The Board can supplement or anticipate alerts by preparing press releases, editorials, or comments the partners can distribute.
- The partners can help by differentiating even their membership, so that here might be better "targeting" of particular alerts.
- The Board will pre-select the most important alerts.

- The Board needs to be responsible for creating alerts that are brief, concise, explain how it will affect people, what to do, how to do it, clear, legalese.
- There may also be alerts where the Board is not clear about impacts and needs to hear from others.
- The Board should give the partners a RegAlert position statement and program description that also explains what the SBRRB is.
- The Board is concerned to not “overload” the partners’ systems and members. The Board needs to work with partners when they have to decide how and what to pass on to their members. This may mean staging alerts or limiting them.
- The Board has a legislative program, and the partners need to coordinate what could otherwise become confusing or excessive on legislative issues.
- The Board needs to keep track of what happens and report back to partners so the partners can report back to their members about what happened.
- The RegAlerts need an “opt-out” link.
- What about the important audience that is not “on email”? Can the Board support mail, fax, brochures, etc.? Can the partners?
- The Board staff needs to contact the partners’ staff to coordinate the details of implementing this collaboration.
- The Board to provide a program description with statements of effectiveness and share back and forth to improve and tailor make the details of the RegAlert program to best meet the needs and best interests of the partners.
- Phone calls need to follow this meeting to go over details.
- A key value to the partners is the Board’s ability to get ahead of the pack when important issues arise regarding rule-making and, to some extent, legislative action. The Board needs to focus on this benefit.
- Have to keep focus on the end-recipients of the RegAlerts: be useful and not overwhelming. Be concise. Tell what the impacts will be.
- The Partners should give the Board feedback on the form, content, etc., of the RegAlerts, as well as to the substance of the issues alerted. The purpose will be to improve the RegAlert tool.
- The partners and the Board should look for ways to plan together or counsel together about approaches to take to issues, business conditions, and so on
- The Board needs to closely vet the bills or regulations and distill down or tweak out the key, specific issues of concern.
- The Board should send the partners content in pdf attachments or other documents that the partners can then offer to their members.
- How many people are we communicating with? Roughly 4,000 – 5,000 at least just in members represented in this room.

Developing and implementing a coordinated public outreach and identification program

- Carry forward training for everyone at a Board meeting so that it can be convenient for neighbor island members. Schedule for August, last 2 hours of meeting. H&P will conduct. Video/audio tapes it as a learning tool; distribute disks so members can refer to it when they have a speaking assignment. The training session will be a “Sunshine” open meeting. Ask Steve to attend to help, too. Cover preparation for media opportunities, not just speeches at organizations.
- Develop a “targets” list of key organizations to address
- Let Lynne (or someone) do one all the others attend and watch
- Develop a FAQ

Small Business Regulatory Review Board

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